THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.18819 of 2006

29.09.2006

Between

Chalasani Venkateswara Rao

…Petitioners

And

Municipal Corporation of Hyderabad, Hyderabad, rep. by its Commissioner and others.

…Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.18819 of 2006

ORDER:

Heard Sri O.Manohar Reddy, learned counsel representing the petitioner and Smt.G.Jyothi Kiran, learned Standing Counsel representing the respondents 1 and 2.

The writ petition is filed for a writ of Mandamus declaring the action of the respondents 1 and 2 in erecting the Foot Over Bridge (FOB) in front of the premises of the petitioner bearing Nos.8-3-948 and 949, Ameerpet, Hyderabad as illegal, arbitrary, and consequently direct the respondents 1 and 2 not to erect the FOB in front of the premises of the petitioner and pass such other suitable orders.

It is stated that the petitioner is the owner of the premises bearing Nos.8-3-948 and 949, Ameerpet,

Hyderabad, that the same is popularly known as Image Trade Centre, Ameerpet, Hyderabad and that the same was constructed, after obtaining permission from the Municipal Corporation of Hyderabad; and that the ingress and egress to the said premises is through the eastern side facing the main road leading to Sanathnagar. It is also stated that the main entrance is also facing on the eastern side, wherein eight shops are located which have been given on rent to various persons and the approach to the shops is from the main road on eastern side, except this passage there is no other passage for the customers to visit the shops. While so, on 04.08.2006 certain persons started digging the land in front of the shops and on enquiry, the petitioner was informed that the respondents 1 and 2 have awarded the contract in favour of the third respondent for erection of FOB and in pursuance of the same, they are excavating the land. Immediately, the petitioner made a representation to the first respondent on 04.08.2006 stating that no notice has been issued to him nor his consent has been obtained before the plan for erection of FOB was sanctioned and it was further pointed out that by construction of the same, the entry to the whole premises of the petitioner will be blocked which would cause irreparable loss and therefore, he requested the respondents 1 and 2 to locate the same at any other place where the same would not cause any

inconvenience to any of the building owners located there. It is further stated that in spite of making representation to the first respondent, no further action has been taken on the said representation and the workers of the third respondent are proceeding with the construction. It is stated that the action of the respondents 1 and 2 in erecting the FOB in front of the premises of the petitioner and thereby depriving him the right of access to the main road is illegal and arbitrary.

The relevant paras (4 and 5) of the affidavit read as under:

> "4. It is submitted that the owner of the building adjacent to the main road has got a right of ingress and egress through every inch of the road. It is also relevant to mention here that for the purpose of road widening, I have given an extent of 25 feet of land. It is submitted that the erection of foot over bridge is on the pathway and the user of the pathway is the public at large including the customers who are visiting the shops situated in the building owned by me. It is submitted that the respondents 1 and 2 have no right to erect the foot over bridge over the pathway. Hence, it is respectfully submitted that the action of the respondents 1 and 2 herein in granting permission for erection for foot over bridge in front of the shops of the petitioner and thereby blocking the passage is not legal and the same is arbitrary. By virtue of the said action of the respondents, the petitioner is deprived of the easementary right of passage to the main road from its building.
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> 5. It is respectfully submitted that the action of the respondents 1 and 2 in erection of the foot over bridge in front of the shops of the petitioner is not

legal and the same is arbitrary. I submit that as per the policy decision taken by the respondents 1 and 2 herein, the construction of foot over bridges across the busy traffic corridors. The proposed foot over bridge is being constructed at the bus stop and not at the traffic corridor. In fact, all the foot over bridges which have been constructed by the respondents 1 and 2 are situated near the traffic junctions. For example, the foot over bridge at Mehdipatnam and Dilsukhnagar have been constructed near the traffic islands. Insofar as the foot over bridge at Begumpet is concerned, it has been constructed only keeping in view of the location of the Hyderabad Public School and Government Women's College. I submit that adjacent to the proposed foot over bridge, there is an 80' road leading to Yellareddyguda and by construction of the foot over bridge the same would not serve the purpose for which it is intended. I submit that earlier the foot over bridge was sanctioned on the northern side of my building and thereafter due to extraneous reasons and only with a view to benefit the owner of the building situated opposite my building i.e., R.S.Brothers, the present location has been chosen. There is no justification on the part of the respondents 1 and 2 in changing the location of the foot over bridge. I submit that even if there are any justifiable reasons for changing the location of the foot over bridge, the respondents 1 and 2 could have selected the place at one corner wherein it would not cause any inconvenience to the me or the adjacent building owner. Hence, it is respectfully submitted that the action of the respondents is not legal and the same is arbitrary."

Strong reliance was placed on the decision of **The Municipal Board, Manglaur v Mahadeoji Maharaj**[1].

A counter affidavit is filed by the respondents 1 and

2 in detail, wherein it is stated at para-3 that in view of the tremendous increase of traffic in Hyderabad-Secunderabad areas and to curb the traffic problem, several traffic studies were done. Pursuant to the same, a Traffic and Transportation Perspective Plan was prepared by the experts for the year 2001-2010 basing on the studies on traffic problems. In this Traffic & Transportation Perspective Plan, several solutions were suggested and the first respondent-Corporation has decided to take up the works as suggested by the experts in the said plan and report.

The construction of pedestrian crossings (FOBs) are also one of the solution to curb the traffic problem. After a study by the experts, 18 suitable locations were pointed out for construction of FOBs. It is also stated that a Committee, comprising Officials from City Administration, other related Departments and technical experts under the Chairmanship of Sri A.Raghotham Rao, I.A.S., was constituted by the Government in pursuance of the directions of this Hon'ble Court to critically examine the factors leading to the several traffic problems, such as traffic jams, frequent congestions, accidents etc. The Committee after a detailed review of previous studies available on the traffic & transportation issues; and discussions with the experts and the administrators concerned; and also after holding meetings with various

interested groups, stakeholders of public representatives, an action plan report was prepared for improving the traffic and transportation situation in the twin cities. In this action plan report also, the action Committee suggested the solution of construction of FOBs suggesting 20 locations in twin cities.

The relevant paras (5, 6, 7, 8 and 9) of the counter affidavit read as under:

> "5. It is submitted that the expert Committee identified 20 locations for construction of FOBs. It was decided by the respondent Corporation to take up the construction of these FOBs in a phase-wise manner. In the first phase, the respondent Corporation has decided to take up construction of FOBs in 8 locations i.e., (1) Rasoolpura (2) Dilsukhnagar (3) Ameerpet (4) Mehdipatnam (5) HPS (Begumpet) (6) Nampally (7) Madina (8) Abids.
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> 6. It is submitted that as part of the infrastructure development for road users the respondent Corporation has evolved the scheme to construct the FOBs for the public convenience etc. on the basis of Public Private Partnership (PPP). The third respondent is the successful bidder to construct the FOB at Ameerpet.
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> 7. It is submitted that Government also accorded permission for construction of FOBs through PPP mode on build operate and transfer basis by issuing G.O.Ms.No.857, dated 08.10.2005. The third respondent who is the successful bidder has taken up the construction of the FOB, Ameerpet and the same is in progress. At this juncture the petitioner herein filed the writ petition on untenable, unsustainable and false allegations with an ulterior motive contending that the FOB construction causes obstruction to access to his building. Such

allegations made by the petitioner are totally false and baseless. Hence denied. The FOB is proposed, taking in view of all the aspects such as access to the shops and movement of the pedestrians along the footpath and prepared the plan for construction of the FOB leaving 7 feet width for the access to the shops. The FOB has been designed as an optimal solution. The present location is one of the most crowded central business areas of Ameerpet with lot of pedestrian movement between these shops and other commercial establishments located both sides of the busy National Highway No.9, which is the most dense traffic corridor of Hyderabad.

8. It is submitted that the contention of the petitioner that no notice has been issued to the petitioner nor the consent of the petitioner is taken before the plans of erection of FOB was sanctioned is untenable and unsustainable. As a policy decision is taken to construct FOB after detailed study made by the experts to curb the traffic problem and for the safety of pedestrians. The decision is taken in view of the public at large. No notice is required to be issued to the petitioner. The decision to construct FOB is taken in the interest and safety of public at large. The personal inconvenience of the petitioner cannot be taken for consideration and the request of the petitioner to relocate the FOB to some other location cannot be considered. The petitioner's allegation that he is deprived of the right to access to the main road from his building is false and baseless. As stated supra, 7 feet wide footpath way is available to lead to his shops from the main road. As per the sanctioned plan, the vehicular entry to his building i.e., Image Trade Commercial Complex is available from the side lane and back side of the property and the main road side, the trade center has only one pedestrian access and all other four pedestrian access (entries) from the by-lane only.

9. It is submitted, as alleged by the petitioner

that his right of ingress and egress from main road to his property was not affected. As per the sanctioned plan the access to his building is intact. The FOB is for the convenience and safety of the several public including the customers visiting the shops of his building. The contention of the petitioner that the FOB is constructed at bus stop and not at the traffic corridor etc. are untenable and unsustainable. The same is not for the wisdom of the petitioner. It is for the wisdom of the experts in this field. All the relevant factors were taken into consideration by the experts before identifying the location. The petitioner has no right to raise any objection on his personal inconvenience. The contention of the petitioner that earlier the FOB was sanctioned on Northern side of his building and thereafter due to extraneous reasons and only with a view to benefit the owners of the building opposite to his building i.e., R.S.Brothers, the present location is chosen is utterly false and baseless and denied."

In the circumstances, the respondents 1 and 2 prayed for dismissal of the writ petition. Reliance was placed on the decision made by this Court in W.P.No.5246 of 2006 on 17.03.2006. In similar fact situation, the learned Judge of this Court disposed of the said writ petition as hereunder:

"I am not inclined to express any opinion whether it is possible for the respondents to change the alignment of the Foot Over Bridge or not. But, however, it is for the first respondent to consider and dispose of the said representation dated 14.3.2006.

Accordingly, the writ petition is disposed of directing the first respondent to consider and dispose of the representation of the petitioners dated 14.3.2006 after giving reasonable opportunity to the petitioners within four weeks from the date of receipt

of a copy of this order. No order as to costs."

In the light of the circumstances referred to *supra*, the petitioner is given liberty to make a representation to the second respondent within a period of one week, and the second respondent to consider the same and take appropriate action, as early as possible, taking into consideration all the facts and circumstances.

The writ petition is accordingly disposed of. No order as to costs.

29.09.2006

VGB

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[1] AIR 1965 SC 1147 (V 52 C 180)